

**R E M A R K S**

Reconsideration of this application, as amended, is respectfully requested.

**THE CLAIMS**

Independent method claim 9 has been amended to clarify that the second focusing control parameter is determined based on sample information obtained when performing the focusing control to achieve the automatic focusing on the reference part using the first control parameter, and independent apparatus claim 18 has been similarly amended to clarify that the focusing control unit is arranged to determine the second focusing control parameter, used when obtaining the pattern image of the part to be inspected, based on sample information obtained when the pattern image of the reference part is obtained by performing the focusing control using the first focusing control parameter.

In addition, independent claims 9 and 18 have been amended to recite that the second focusing control parameter contains at least one of movement speed used by said focusing control unit, search range used when acquiring the observation object, autofocus method, offset amount, and contrast threshold, along the lines formerly recited in (now canceled) claims 19 and 23.

No new matter has been added, and it is respectfully requested that the amendments to the claims be approved and entered.

THE PRIOR ART REJECTION

Claims 2-4, 9-12 and 18-26 were rejected under 35 USC 103 as being obvious in view of the combination of previously cited USP 4,496,971 ("West et al"), USP 5,761,336 ("Xu et al") and newly cited USP 4,860,374 ("Murakami et al"). This rejection, however, is respectfully traversed with respect to the claims as amended hereinabove.

\_\_\_\_ According to the present invention as recited in clarified amended independent method claim 9, the second focusing control parameter is determined based on sample information obtained when performing the focusing control to achieve the automatic focusing on the reference part using the first control parameter, and similarly according to the present invention as recited in clarified amended independent apparatus claim 18, the focusing control unit is arranged to determine the second focusing control parameter, used when obtaining the pattern image of the part to be inspected, based on sample information obtained when the pattern image of the reference part is obtained by performing the focusing control using the first focusing control parameter.

On page 5 of the Office Action dated July 6, 2009, the Examiner acknowledges that West et al does not teach determining a second focusing control parameter based on sample information obtained when performing focusing control to achieve automatic focusing on the reference part. For this reason, the Examiner

has cited Xu et al and asserts at the bottom of page 6 of the Office Action that Xu et al teaches this feature. In particular, the Examiner points to the disclosure in Xu et al at column 3, lines 21-32 and column 4, lines 30-40.

It is respectfully submitted, however, that the portions of Xu et al pointed to by the Examiner merely disclose that a stepper motor changes an aperture stop to adjust intensity, and that defects are detected at a plurality of different intensities to determine which intensity provides a highest ratio of true defects to false defects. And it is respectfully submitted that Xu et al does not at all disclose or suggest determining a second focusing control parameter (which is used when obtaining the pattern image of the part to be inspected) based on sample information obtained when performing the focusing control to achieve automatic focusing on the reference part using a first control parameter, as according to the present invention as recited in clarified amended independent claims 9 and 18.

In addition, it is respectfully submitted that Murakami et al also fails to disclose or suggest this feature of the present invention as recited in clarified amended independent claims 9 and 18.

Still further, it is respectfully submitted that none of West et al, Xu et al and Murakami et al discloses or suggests the feature of the present invention as recited in amended

independent claims 9 and 18 whereby the second focusing control parameter contains at least one of movement speed used by said focusing control unit, search range used when acquiring the observation object, autofocus method, offset amount, and contrast threshold. Indeed, as pointed out hereinabove, none of these references discloses or suggests determining a second focusing control parameter in the manner of the present invention as recited in amended independent claims 9 and 18.

Accordingly, it is respectfully submitted that even if the cited references were combinable in manner suggested by the Examiner, any such combination still would not achieve or render obvious the above described features of the present invention as recited in amended independent claims 9 and 18.

In view of the foregoing, it is respectfully submitted that the present invention as recited in amended independent claims 9 and 18, and all the claims respectively depending therefrom, clearly patentably distinguishes over the cited references, taken singly or in any combination consistent with the respective fair teachings thereof, under 35 USC 103.

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Entry of this Amendment, allowance of the claims and the passing of this application to issue are respectfully solicited.

If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,

/Douglas Holtz/

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